



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,614	11/30/2000	Phillip Balsamo	11873-007001	5192

7590 12/10/2004

DENIS G. MALONEY
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804

EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/728,614

Applicant(s)

BALSAMO ET AL.

Examiner

Stephan F Willett

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 5 and 23 “pass through type” is unclear, but was interpreted to mean the record didn’t need to be updated or added or tracked.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-12, 15-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Bayeh et al. with Patent Number 6,098,093.

5. Regarding claim(s) 1, 15, 21, 26, Bayeh teaches determining whether a session key or session id, col. 10, lines 10-12 maps to an active session, col. 10, lines 12-16 and determining whether said session data exists, col. 10-11, lines 67-2. Bayeh teaches dropping the record if the

Art Unit: 2141

session key, id or record if the session exists already, col. 10, lines 58-60, for example, if session is not required, col. 10, lines 54-57, or the session is part of an existing session, col. 10, lines 14, or the session was dropped for some other reason, col. 11, lines 51-58; col. 12-13, lines 61-2.

Bayeh teaches a processor and memory, col. 7-8, lines 66-1.

6. Regarding claim(s) 2, Bayeh teaches receiving network packets or data, col. 7, line 17, and producing from the network data the records or files that contain statistic type data and properties, col. 11, lines 49-52; col. 14, lines 46-48.

7. Regarding claim(s) 3, Bayeh teaches routing records or files to an order enhancing type node or “session server” to perform updating, dropping, etc. type actions, col. 11, lines 3-11; col. 13, lines 7-14.

8. Regarding claim(s) 4, 12, 16, 22, Bayeh teaches determining whether a session key or session id, col. 10, lines 10-12 maps to an active session, col. 10, lines 12-16 and dropping the record if the session key, id or record if the session exists already, col. 10, lines 58-60, for example, if session data is not required, col. 10, lines 54-57, or the session is part of an existing session, col. 10, lines 14, or the session was dropped for some other reason, col. 11, lines 51-58; col. 12-13, lines 61-2, col. 4, lines 15-16 wherein the backup is understood to replace and/or delete the previous data.

9. Regarding claim(s) 17, Bayeh teaches dropping the record if the session key, id or record if the session exists already, col. 10, lines 58-60, for example, if session is not required, col. 10, lines 54-57, or the session is part of an existing session, col. 10, lines 14, or the session was dropped for some other reason, col. 11, lines 51-58; col. 12-13, lines 61-2.

10. Regarding claim(s) 5, 23, Bayeh teaches passing through the record, for example, as if

Art Unit: 2141

session data is not required or tracked, col. 10, lines 54-57.

11. Regarding claim(s) 6, 24, Bayeh teaches the session key or id, col. 3, lines 5-14 maps to no session ID or active session, col. 10, lines 12-16 adding the session to active session table, col. 14, lines 50, thus in effect adding a record or session file.

12. Regarding claim(s) 7, 19, Bayeh teaches the session is complete as “finishing”, col. 10, line 56, or in effect determining if the session is valid, col. 12-13, lines 61-2.

13. Regarding claim(s) 8, 25, Bayeh teaches the session is complete as “finishing”, col. 10, line 56, or in effect determining if the session is valid, col. 12-13, lines 61-2. Bayeh teaches sequencing or maintaining a database by record number or id or reference or address or “single set of values”, col. 11-12, lines 67-3.

14. Regarding claim(s) 9, Bayeh teaches propagating to an output file or “properties file” records according to records ids, col. 12, lines 2-3

15. Regarding claim(s) 10, 20, Bayeh teaches removing a session above, and propagating or updating the records to the output file or “properties file” as , col. 6, lines 22-24

16. Regarding claim(s) 11, 18, Bayeh teaches adding the session to active session table, col. 14, lines 50, thus in effect adding a record or session file.

Claim Rejections - 35 USC § 103

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayeh et al. with Patent Number 6,098,093 view of Smith et al. with Patent Number 5,835,724.

20. Regarding claim(s) 13, Bayeh teaches determining whether a session key or session id, col. 10, lines 10-12 maps to an active session, col. 10, lines 12-16 and determining whether said session data exists, col. 10-11, lines 67-2. Bayeh teaches dropping the record if the session key, id or record if the session exists already, col. 10, lines 58-60, for example, if session is not required, col. 11, lines 54-55, or the session is part of an existing session, col. 10, lines 14, or the session was dropped for some other reason, col. 11, lines 51-58; col. 12-13, lines 61-2. Bayeh teaches the invention in the above claim(s) except for explicitly teaching using a wireless link protocol. In that Bayeh operates to maintain session state data in a computer network, the artisan would have looked to the network communication session state data arts for details of implementing current state data tables. In that art, Smith, a related network data state communication system, teaches "session server maintains session data", col. 6, line 16 in order to provide current state data. Smith specifically teaches "wireless" "links "including protocol conversion", col. 5, lines 57-58 to insure a diverse network. Further, Smith suggests "the

retention of session data”, col. 6, line 23 will result from implementing this session maintenance communication system. The motivation to incorporate wireless communication insures diverse communications in today’s network is supported. Thus, it would have been obvious to one of ordinary skill in the art to incorporate use a wireless protocol as taught in Smith into the communication system described in Bayeh because Bayeh operates with various network communication protocols and Smith suggests that optimization can be obtained by specifically tailoring services to wireless devices as needed. Therefore, by the above rational, the above claims are rejected.

21. Regarding claim(s) 14, Bayeh teaches adding the session to active session table, col. 14, lines 50, thus in effect adding a record or session file.

Response to Amendment

1. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.
2. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.
3. Pursuant to MPEP 2111.02, the weight afforded the preamble of the claim is many times not that clear. In the present claim 1 argued, the “statistics” in the preamble has been ignored in interpreting the claims.
4. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the

references and relevant portions of the reference. For example, the applicant suggests “as is now apparent” and some type of “key”. In this regard, applicant argues “the network record however is not a session object as disclosed by Bayeh but rather an item produced from gathering statistics”, Paper No. 8, Page 9, line 11, which is also not claimed.

5. Applicant suggests Bayeh “discloses to drop the session itself”, Paper No. 8, Page 8, line 56. Specifically, a session ID is associated with a client’s session, col. 3, lines 1-19 and said session contains all the state data from the session in a record or file or object, thus when the session is dropped the session ID is dropped and the data or record associated with the session is also dropped. But the reference also included other examples where session records would be dropped, such as at col. 10, lines 54-57; col. 10 line 14; col. 11, lines 51-58; col. 12, lines 12-13, 61-2. Also, Bayeh states “it would not have made use of that session”, col. 10, lines 59-60 referring to the “valid session ID”, col. 3, lines 1-19; col. 6, line 19, thus in essence since the valid session ID invoked with the servlet was not utilized, the session ID record was “dropped” along with the session ID/key that identifies the record/session, col. 12, lines 53-67. The references should not be read in a vacuum, the teachings are not mutually exclusive, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. The descriptions in the references are not obfuscated by the numerous other suggested usages of said description in the reference. In addition, implicitly, impliedly and inferentially, various implications result due to “dropping” a session as are taught and language identical or verbatim is not required in an obvious rejection. Based on the claims broad language, a session reads on a record, and as is understood in the arts a record makes up or

Art Unit: 2141

is made of the session. Note that reasonable “inferences”, and “common sense” may be considered in formulating rejections for obviousness. Specifically, *In re Preda*, 401 F.2d 825, 159 USPQ 342, 344 (CCPA 1968) states “in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” Also, *In re Bozek*, 416 F.2d 738, 163 USPQ 545, 549 (CCPA 1969) states that obviousness may be concluded from “common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference”. Additionally, see *In re Gauerke*, 24 CCPA 725, 86 F.2d 330, 31 USPQ 330, 333 (CCPA 1936), and *In re Libby*, 45 CCPA 944, 255 F.2d 412, 118 USPQ 94, 96 (CCPA 1958), and *In re Jacoby*, 309 F.2d 738, 125 USPQ 317, 319 (CCPA 1962), and *In re Wiggins*, 488 F.2d 538, 543, 1979 USPQ 421, 424 (CCPA 1973). Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

Conclusion

22. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the Courts et al. with Patent Number 6,067,108; Kern et al. with Patent Number 6,484,187; and Sato et al. with Patent Number 6,286,024 are suggested. The other references cited teach numerous other ways update and maintain session data, thus a close review of them is suggested.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2141

7. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-0044.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

sfw

December 7, 2004


RUPAL DHARIA
SUPERVISORY PATENT EXAMINER